

APPEAL NO. 010148

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 3, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable right knee injury on _____; that the claimant timely notified the employer of the work-related injury on _____; and that the appellant (carrier) is not relieved of liability for this claim. The carrier appealed, asserting that there is no medical evidence that the claimant suffered an injury in the course and scope of her employment, and that the claimant did not timely notify her employer of an injury. In her response, the claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that she worked in the employer's layaway department; that on _____, she carried some boxes up a flight of stairs; that there were boxes on the floor; and that when she tried to avoid them, she lost her balance and put all of her pressure on her right knee. She experienced immediate pain but was able to finish the remainder of her shift. The claimant further testified that the assistant manager saw her limping and asked her what was wrong; that she informed him of what had happened and he suggested that they fill out a report; and that he filled out an incident report at the end of her shift. She said she had intermittent pain for the next five months, and finally sought medical treatment on July 19, 1999, and was diagnosed as having internal derangement of the right knee with a probable meniscus tear.

The hearing officer found that the respondent twisted her right knee while carrying boxes upstairs and that she timely notified a supervisor of the employer on _____.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer obviously found the claimant's testimony persuasive. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers'

Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respondent for that of the hearing officer.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge